

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

DON HAMILTON,)
)
Appellant,)
)
vs.)
)
YAKIMA COUNTY CLEAN)
AIR AUTHORITY,)
)
Respondent.)
_____)

PCHB No. 67
FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250 civil penalty for an alleged open burning violation of respondent's Regulation 1, came before the Pollution Control Hearings Board (Walt Woodward, hearings officer), in the Yakima County Courthouse at 10:45 a.m., November 30, 1971.

Appellant appeared and was represented by counsel, Homer B. Splawn. Respondent was represented by William Cramer, executive director and control officer. Olive Blankenbaker, court reporter, prepared the record.

Witnesses were sworn, testified and were questioned. On the basis

1 of testimony, the Pollution Control Hearings Board sets out these

2 FINDINGS OF FACT

3 I.

4 In June, 1971, appellant properly requested of respondent
5 permission for open burning of pear trees for land clearing of four
6 acres at the intersection of 28th and Viola Avenues in Yakima.

7 II.

8 Respondent, in a letter written to appellant June 15, 1971, by
9 William Cramer, its control officer (see file for copy of letter)
10 approved the open burning. The letter contained the general warning
11 that the burning must be done "with an effort to minimize air
12 pollution and local problems of fly ash."

13 III.

14 The letter also contained several minimizing suggestions,
15 including omission of stumps, shortening of tree lengths to eight
16 feet and burning out of all fires before nightfall.

17 IV.

18 In the morning of October 21, 1971, appellant properly notified
19 respondent of his intention to burn that day. During the afternoon,
20 respondent received complaints of excessive fly ash in the neighborhood
21 of the Hamilton project. That night, about 10:00 p.m., Mr. Cramer was
22 called to the scene by the Yakima Fire Department which was extinguishing
23 fires on the land clearing site. Fires were burning in four piles, each
24 about 20 to 25 feet in diameter.

25 V.

26 The piles consisted of whole trees. They had been stacked with
27 fork lift equipment. No bulldozer was used. Whether there were stumps

1 in the burned piles is not clear.

2 VI.

3 A few days later, at Mr. Hamilton's request, Mr. Cramer witnessed
4 a "demonstration" burning of two more piles at the site. Other piles
5 were not burned that day because of a shift in wind direction and
6 because Mr. Cramer felt some of the piles were too large. Subsequently,
7 the other waste material was burned without citation after Mr. Cramer
8 and Mr. Hamilton discussed the use of smaller piles.

9 From these facts, the Pollution Control Hearings Board comes to
10 these

11 CONCLUSIONS

12 I.

13 Throughout this matter, there is considerable indication that
14 appellant evidenced cooperation with the rules of the Yakima County
15 Clean Air Authority. Early in the affair, appellant requested
16 permission to burn, was granted same, and on the day of the burning,
17 notified respondent as requested. Subsequently, a "test" burn was
18 staged by appellant. What violation there was, if any, does not
19 appear to be willful.

20 II.

21 Respondent's letter to appellant of June 15, 1971, is the turning
22 point for the question of whether a violation occurred.

23 III.

24 Appellant makes much of the words "suggest" and "may" and other
25 alleged vagaries in the letter. This contention of vagueness is
26 offered in defense of the fact that tree lengths were not restricted
27 to eight feet and of the fact that the fires were not burned out prior

FINDINGS OF FACT,

1 to nightfall.

2 IV.

3 The key phrase of the letter, however, appears to be the
4 stipulation that the burning, to be acceptable, must be done "with
5 an effort made to minimize air pollution and local problems of
6 fly ash." The burden of an acceptable burn, therefore, is placed
7 upon the appellant. Appellant agreed to this burden in setting the
8 fires. It cannot be held that respondent is responsible for an
9 acceptable burn.

10 V.

11 Appellant, in causing excessive fly ash and in burning at
12 night to such a degree as to cause the Yakima Fire Department to
13 extinguish the blazes, was in violation of Regulation 1 of the
14 Yakima County Clean Air Authority.

15 ORDER

16 The citation of appellant for open burning in violation of
17 Regulation 1 of the Yakima County Clean Air Authority and the penalty
18 of \$250.00 are sustained.

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Olympia, Washington this 1st day of February, 1972.

2 POLLUTION CONTROL HEARINGS BOARD

3
4 Matthew W. Hill
MATTHEW W. HILL, Chairman

5
6 Walt Woodward
7 WALT WOODWARD, Member

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9 James T. Sheehy
10 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER